IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR
and
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION NO :26538 of 2006

Dated: 22nd December 2006.

Between:
Pokuri Mallikarjuna Rao, s/o Sri Ramulu,
Prop. Sri Rama Financial Services, Southern Street,
Near Clock Tower, Eluru, West Godavari District.

..... PETITIONER

AND

The Assistant Commissioner of Income Tax, Circle-I,
Eluru, West Godavari District and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE D.APPA RAO

W.P.NO.26538 OF 2006

ORAL ORDER:
(Per the Hon'ble Sri Justice J.Chelameswar)

This writ petition is filed with the prayer as follows:

> " For the reasons stated in the accompanying affidavit, it is prayed that the Hon'ble Court be pleased to issue a Writ, Order or Direction one in the nature of Mandamus declaring the order of the 1st respondent in GIR No.AENPP0679P/2002-03 & 2003-04, dated 09-11-2006 as illegal, bad and violative of Art.14 of the Constitution of India and set aside the same directing the 1st respondent not to take any coercive steps for the recovery of the petitioner's penalty dues for the assessment year 2003-04 pending disposal of his appeal before the
> 3rd respondent and pass such other order or orders as it deems fit and proper in the circumstances of the case."

The petitioner is an assessee on the rolls of the 1st respondent under the Income Tax Act 1961 (for short 'the Act'). For the assessment year 2003-04, the petitioner's liability for tax was determined by an order dated 30-09-2004, under Section 143(3) of the Act. As the Assessing Authority was of the opinion that there was violation of Section 269SS of the Act, referred the matter to the 2nd respondent for initiation of penalty proceedings under Section 271D of the Act. Eventually, the 2nd respondent passed an order dated 25-09-2006 imposing penalty. Aggrieved by the same, the petitioner carried the matter in appeal before the 3rd respondent and the same is said to be still pending. In view of the

pendency of the appeal, the petitioner made an application to the

1st respondent under Section 220(6) of the Act. The said application was rejected by a letter dated 09-11-2006, without assigning any reason whatsoever. Hence, the present writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

In the circumstances, we are of the opinion that the matter can be disposed of at this stage directing the respondents not to take any coercive steps for recovery of the disputed penalty, on condition of the petitioner depositing 25% of the disputed penalty within a period of six weeks from today. The amount already paid, if any, towards the penalty, shall be given credit to while computing the abovementioned 25%.

Accordingly, with the above direction, the writ petition is disposed of at the stage of admission.

J.Chelameswar, J

D.Appa Rao, J

22nd December 2006
mrk